

GEORGE, DeGREGORIO, MASSIMIANO & McCARTHY, P.C.  
ATTORNEYS AT LAW  
BERKSHIRE COMMON  
PITTSFIELD, MASSACHUSETTS 01201  
TELEPHONE (413) 499-4400  
TELECOPIER (413) 499-0716

Michael J. McCarthy

E-mail: mmccarthy@gdmmlaw.com  
Admitted in MA and ME

TO: The Lanesborough Board of Selectmen  
FROM: Sgt. Timothy Sorrell/Attorney Michael J. McCarthy  
DATE: August 30, 2004  
SUBJECT: Issues for Consideration by the Board of Selectmen

- I. Removal of documents from the Board of Selectmen's public records.
  - A. Items to be removed:
    - i. Chief's letter 2/8/99
    - ii. Sorrell's apology 2/8/99
    - iii. Board's minute of February 22, 1999 for Executive Session 2/8/99
    - iv. Board Member Gallant's letter of 12/17/03 (see Board Minute of 12/29/03)
    - v. Board Minute of 12/17/03 regarding comment from Board Member Gallant
  - B. February 8, 1999 – Illegal executive session
    - i. No notice to Sgt. Sorrell
    - ii. No entry on agenda
    - iii. No vote reported
  - C. No violations alleged
  - D. No discipline taken

II. Removal of documents from Sgt. Sorrell's personnel file.

- A. Same as I, above
- B. CBA – Article 16
  - i. Just cause
  - ii. Not anonymous
  - iii. Charges in writing
  - iv. Hearings
  - v. Association to be involved (Article #1)
  - vi. Process to be in writing

III. Reconsideration of appointment of Chief of Police

- A. Not a personal attack upon Chief Bashara.
- B. Public Policy Mandate from Special Town Meeting August 22, 1977, establishing the Police Commission.
- C. Policy followed by Selectmen on all occasions except this one.
- D. Substantive process tainted by Board's refusal or failure to recognize III(A) and III(B), above.
  - i. Eight point swing on Question 11.
  - ii. See III(f), below.
  - iii. Webb's letter showed 2.2 point margin.
- E. Police Commission recognized in CBA, Articles 14, 15.
- F. Selectboard had decided before input from Police Commission.
  - i. Minutes 12/17/03.
    - (a) Commission files letter recommending Sorrell.

- (b) Webb files letter for Bashara.
  - (c) Elfenbien files letter for Bashara.
  - \*Must be removed from Record\* (d) Gallant states Sorrell's resume was better written, but "felt I did not receive an honest answer to all of them". This is clearly a reference to Question 11. Gallant endorses Bashara. Made part of record 12/29/03.
  - (e) Nobody considered the Commission's recommendation.
- G. Sorrell had no knowledge (NOR should he) that Chief's letter and/or Board's minutes of executive session were in personnel file.
- i. Not discipline; Not supposed to be in personnel file.
  - ii. Protocol for viewing personnel file. See Personnel Policy V.
  - iii. No record of Sorrell ever viewing personnel file.

# MINUTES OF SPECIAL TOWN MEETING LANESBOROUGH, MASSACHUSETTS

AUGUST 22, 1977

A Special Town Meeting was held at Newton Memorial Town Hall on Monday, August 22, 1977. Opened at 8 P.M. by Moderator, Mary C. DeChaine, who entertained a motion to dispense with the reading of the entire Warrant at this time. MOTION made and SECONDED to dispense with the reading of the entire Warrant at this time. It is a VOTE, the AYES have it. Unanimous vote. Moderator read attestation of the posting of the Warrant on July 23, 1977 for the meeting which was originally set for August 8, 1977, by Police Officer William Prendergast. The Warrant was removed by a Police Officer on August 3, 1977 and the Special Town Meeting officially postponed to August 22, 1977. Officer William Prendergast posted the Warrant for the August 22 meeting on August 3, 1977. Moderator announced that only registered voters may participate, all motions must be in writing and all comments be addressed to the Moderator. The following Articles of business were acted upon:

ARTICLE 1. To see if the Town will vote to appropriate and transfer from unappropriated available funds in the treasury, the sum of \$1,000.00, for the purpose of replacing five hundred and fifty feet of two and one-half inch fire hose for the Fire Department, any monies recoverable under insurance to be returned to general funds, or take any other action thereon.  
(Recommended by the Finance Committee.)

ARTICLE 1. MOTION made and SECONDED that the Town vote to appropriate and transfer from unappropriated available funds in the treasury, the sum of \$1,000.00, for the purpose of replacing five hundred and fifty feet of two and one-half inch fire hose for the Fire Department, any monies recoverable under insurance to be returned to general funds. It is a VOTE, the AYES have it. Unanimous vote.

ARTICLE 2. To see if the Town will vote to appropriate and transfer from unappropriated available funds in the treasury, the sum of \$7,000.00, to repair the International Pumper to be used by the Fire Department, or take any other action thereon.  
(Recommended by the Finance Committee.)

ARTICLE 2. MOTION made and SECONDED that the Town vote to appropriate and transfer from unappropriated available funds in the treasury, the sum of \$7,000.00, to repair the International Pumper to be used by the Fire Department. It is a VOTE, the AYES have it. Unanimous vote.

ARTICLE 3. To see if the Town will vote to appropriate and transfer from unappropriated available funds in the treasury, the sum or sums of money for the following unpaid bills:

John M. Weider  
Bernard H. Starr

June, 1977 \$ 27.00  
May, 1977 825.00

printing of the 1977 Town Reports. It is a VOTE. The AYES have it. Unanimous vote.

ARTICLE 4. To see if the Town will vote to appropriate and transfer from Public Works Employment Act of 1976, Anti-Recession, Title II, the amount of \$976.11, plus any further allocations and interest which may be accrued during the year, for the repair and maintenance of public buildings in the Town; or take any other action thereon.

(Recommended by the Finance Committee.)

ARTICLE 5. MOTION made and SECONDED that the Town vote to appropriate and transfer from Public Works Employment Act of 1976, Anti-Recession, Title II, the amount of \$976.11, plus any further allocations and interest which may be accrued during the year, for the repair and maintenance of public buildings in the Town. It is a VOTE. The AYES have it. Unanimous vote.

ARTICLE 6. To see if the Town will vote to appropriate and transfer from unappropriated available funds in the treasury, the sum of \$1,266.87, for Fire Protection for the Fiscal Year 1976-77, or take any other action thereon.

(Recommended by the Finance Committee.)

ARTICLE 6. MOTION made and SECONDED that the Town vote to appropriate and transfer from unappropriated available funds in the treasury, the sum of \$1,266.87, for Fire Protection for the Fiscal Year 1976-77. Moderator pointed out that a nine-tenths majority vote is required. It is a VOTE. The AYES have it. Unanimous vote.

ARTICLE 7. To see if the Town will vote to transfer from the Stabilization Fund the sum of \$1,000.00, to be added to the sum of \$19,000.00 which was voted at the Annual Town Meeting for the purchase of a four wheel drive dump truck for the use of the Highway Department, or take any other action thereon.

(Recommended by the Finance Committee.)

ARTICLE 7. MOTION made and SECONDED that the Town vote to transfer from the Stabilization Fund the sum of \$1,000.00, to be added to the sum of \$19,000.00 which was voted at the Annual Town Meeting for the purchase of a four wheel drive dump truck for the use of the Highway Department. MOTION made and SECONDED to amend the Article to read "that the Town vote to appropriate and transfer from unappropriated funds in the treasury the sum of \$1,000.00 to be added to the sum of \$19,000.00 which was voted at the Annual Town Meeting for the purchase of a four wheel drive dump truck for the use of the Highway Department. It is a VOTE, the AYES have it. Unanimous. The Article is AMENDED. MOTION made and SECONDED to vote on the main motion as amended. It is a VOTE. The AYES have it. Unanimous vote.

ARTICLE 8. To see if the Town will vote to authorize and charge the Selectmen to appoint a Police Commission with the following responsibilities:

A. Investigate complaints against the Police Department or individual officers.

B. Investigate and make recommendations in cases of conflict within the Police Department.

C. Provide for liaison between the general public and the Police Department.

D. Assist the Board of Selectmen in any matters regarding operation of the Police Department.

E. Review recommendations of the Chief of Police for appointments of patrolmen and part time officers. The appointment of a Chief of Police requires endorsement of the Police Commission. (By petition)  
(Recommended by the Finance Committee.)

ARTICLE 8. MOTION made and SECONDED that the Town vote to authorize and charge the Selectmen to appoint a Police Commission with the following responsibilities:

A. Investigate complaints against the Police Department or individual officers.

B. Investigate and make recommendations in cases of conflict within the Police Department.

C. Provide for liaison between the general public and the Police Department.

D. Assist the Board of Selectmen in any matters regarding operation of the Police Department.

E. Review recommendations of the Chief of Police for appointments of patrolmen and part time officers. The appointment of a Chief of Police requires endorsement of the Police Commission. It is a VOTE. The AYES have it.

ARTICLE 9. To see if the Town will vote to establish the Police Commission as a five member Board to be appointed by the Selectmen, with the membership being five years with one member being appointed each year. (By petition.)  
(Recommended by the Finance Committee.)

ARTICLE 9. MOTION made and SECONDED that the Town vote to establish the Police Commission as a five member Board to be appointed the Selectmen, with the membership being five years with one member being appointed each year. It is a VOTE. The AYES have it.

ARTICLE 10. To see if the Town will vote to charge the Board of Selectmen to appoint as members of the Police Commission the individuals serving as members of the Police Review Commission on June 1, 1977. (By petition.)  
(Recommended by the Finance Committee.)

ARTICLE 10. MOTION made and SECONDED that the Town vote to charge the Board of Selectmen to appoint as members of the Police Commission the individuals serving as members of the Police Review Commission on June 1, 1977. It is a VOTE. The AYES have it.

ARTICLE 11. To see if the Town will vote that "no appropriation by the Town on Lanesboro (aka Lanesborough) of \$5,000.00 or more for a contract with an agency, individual or any legal entity including but not exclusively contracts with engineering firms for consultation and architectural firms, other than a town

STANLEY MISIUK  
CHIEF OF POLICE

POLICE HEADQUARTERS  
NORTH MAIN STREET

**TOWN OF LANESBOROUGH  
MASSACHUSETTS**

**POLICE DEPARTMENT**

February 8, 1999

Dear Selectboard:

I am writing to advise you that a incident took place on Wednesday, 2/3/99 at the Lanesboro Police Station. Town Clerk, Judy Gallant came to the station at 12:30 P.M. to deliver a piece of cake to Chief Misiuk. The cake was made by Sue Koziara. Apparently, there was a party at noon at the Town Hall for a number of town employees that birthdays occurred in January and February. I could not attend the party and this is why the cake was delivered to the station. According to Judy Gallant, she delivered three pieces of cake to the station and when she walked into the station, Officer Sorrell asked her "who made the cake" and Judy replied Sue Koziara and Officer Sorrell replied "she is just trying to get into the Chief's pants". Officer John Bassi was also present.

On Monday, 2/8/99 I spoke to Sue Koziara and she was upset by the comments made by Officer Sorrell. I spoke to Officer Sorrell and he admitted that he did make the comment and it was made in jest and he did not think it would go any further. Officer Sorrell has written a letter of apology to Sue Koziara and she advised me that this would suffice.

*Needs to come  
out of personnel  
file.  
Illegal meeting.*

Respectfully submitted,  
*Chief Stanley Misiuk*  
Chief Stanley Misiuk  
Lanesboro P.D.

To: Sue Koziara  
From: Tim Sorrell  
Date: 2/8/99

Sue,

It is my understanding that you were upset and offended by what was said by me on Wednesday 1/17/99 to Judy Gallant. I apologize for upsetting you, it was not to be degrading or upsetting. It was said in private and in a joking manner.

Once again I apologize for any offense you took by it.

A handwritten signature in dark ink, appearing to read 'Tim Sorrell', with a stylized, cursive script.

Tim Sorrell



February 8, 1999

EXECUTIVE SESSION

Present: Mrs. Brower, Mr. DiLego, Mr. Gallant, Mr. Boudreau

Purpose: Personnel matters

Mr. Boudreau informed the Board that there was an incident last week involving a comment made by Police Officer Timothy Sorrell regarding Susan Koziara. A letter of apology from Officer Sorrell was given to Ms. Koziara and she is satisfied with the letter. This matter will be a part of Officer Sorrell's employment file.

Board reviewed the Town's Sexual Harassment Policy; and agreed that as long as Ms. Koziara was satisfied with the action taken, they would not pursue this matter.

\*\*\*\*\*

Mr. Boudreau informed the Board that the Finance Committee had asked him if the Town Collector raise in FY99 was justified.

Board agreed to schedule a meeting with the Collector for February 22 to discuss his duties.

A motion was made by Mr. DiLego, seconded by Mrs. Brower and unanimously voted to remove from Executive Session.

*William J. DiLego 2/22/99*  
*L. Ruth Brower 2/22/99*  
*Gov. N. H. H. 2/22/99*

December 17, 2003

Present: Mr. Douglas R. Webb  
Ms. Gae Elfenbein  
Mr. Peter H. Gallant, Sr.  
Mr. Paul Boudreau, Town Administrator

Warrants: No Warrants

The meeting was called to order by Mr. Webb at 9:00 a.m.

Mr. Michalak brought a letter from the Police Review Commission recommending Timothy Sorrell, two to One. Mr. Boudreau read the letter for the record (see attached). Mr. Gallant made a motion to call for a vote for the position of Chief of Police, seconded by Ms. Elfenbein. Discussion: Mr. Webb presented his letter recommending F. Mark Bashara for the position. Mr. Boudreau read the letter for the record (see attached). Ms. Elfenbein presented her letter recommending F. Mark Bashara for the position. Mr. Boudreau read the letter for the record (see attached). Mr. Gallant had not prepared a letter so he made a statement as follows: "Starting with the letters of recommendations both candidates come highly recommended by many people. I did not put that much emphasis on them. Secondly both candidates' resumes were excellent. Timothy Sorrell's was better written. The questions for the interview were set up for a reason. I felt I did not receive an honest answer to all of them. The best person to replace Stan Misiuk for the long term (20 year term) I feel that man is F. Mark Bashara." Mr. Gallant thanked the Police Review Commission for the job they did. Mr. Webb stated that he would like to keep in closer contact with the Police Commission and the Police Department in the future. Ms. Elfenbein agreed that the Board needs to meet and re-establish the reasons for the Commission's existence and duties. Mr. Webb called for the Vote: Mr. Gallant, F. Mark Bashara; Ms. Elfenbein, F. Mark Bashara; Mr. Webb, F. Mark Bashara. Motion made by Ms. Elfenbein to appoint F. Mark Bashara Police Chief for the Town of Lanesborough to be sworn in on Saturday, December 20, 2003 at the Town Hall and to begin duties on January 1, 2003, seconded by Mr. Gallant. There being no further discussion. Unanimously voted. Both candidates were notified. Sergeant Sorrell was called And Officer Bashara was paged, came to Town Hall and was informed of the Board's decision.

APPOINTMENT  
OF POLICE  
CHIEF

*Elfenbein*  
*Q11: 4 v 1*  

---

*Gallant*  
*Q11: 5 v 0*  

---

*Not 8 point*  
*Savoy*  
*And Integrity Award*

December 29, 2003

Present: Mr. Peter H. Gallant, Sr.  
Mr. Webb  
Ms. Elfenbein

Warrants: No Warrants

The meeting was called to order by Mr. Webb at 7:00 pm.

Motion to accept the minutes of the December 10, 2003 meeting made by Ms. Elfenbein, seconded by Mr. Gallant. Unanimously voted. Motion to accept the minutes of the December 10, 2003 executive session made by Ms. Elfenbein, seconded by Mr. Gallant. Unanimously voted. Motion to accept the minutes of the December 15, 2003 meeting made by Ms. Elfenbein, seconded by Mr. Gallant. Unanimously voted. Motion to accept the minutes of the December 17, 2003 meeting made by Ms. Elfenbein, seconded by Mr. Gallant. Unanimously voted.

ACCEPTED  
MINUTES

Mr. Gallant read into the minutes his letter recommending F. Mark Bashara for Chief of Police (see attached).

POLICE  
CHIEF

Meeting regarding the Sunday opening of package stores, present were representatives of the four package stores located in Lanesborough. Mr. Gallant reported that he does not see any need to increase the annual fee because of the additional days the package stores may be open. Mr. Gallant made a motion that the license fees stay the same and to change the dates that the businesses are allowed to be open, seconded by Ms. Elfenbein. Unanimously voted. Motion made by Mr. Gallant to amend the wine and malt license for Wohrle's Specialty Foods (Astro Beef and Gourmet Foods) to include opening on Sundays, seconded by Ms. Elfenbein, Unanimously voted. Motion made by Ms. Elfenbein to amend the wine and malt for Lanesborough Supermarket and Hardware, Inc. to include opening Sundays, seconded by Mr. Gallant. Unanimously voted. Motion made by Ms. Elfenbein to amend the all alcohol license for Pontoosuc Package Store, Inc., to include opening on Sundays, seconded by Mr. Gallant. Unanimously voted. Motion made by Ms. Elfenbein to amend the all alcohol license for Berkshire Village Liquors to include opening on Sundays, seconded by Mr. Gallant. Unanimously voted.

SUNDAY  
OPENING  
FOR  
PACKAGE  
STORES

December 16, 2003

Board of Selectmen  
Town Hall  
23 North Main Street  
Lanesboro, MA 01237

Lanesboro Board of Selectmen

**SUBJECT: RECOMMENDATION FOR LANESBORO CHIEF OF POLICE**

On the 10<sup>th</sup> of December, 2003, the Police Commission, Board of Selectmen, and the town Administrator, conducted interviews with Mark Bashara and Timothy Sorrell for the purpose of selecting a new Chief of Police for the town of Lanesboro. Both candidates performed extremely well that evening, and in the discussions following, the general feeling was both candidates are good men, both deserving the title of Chief of Police. However, there can only be one winner.

Notes were taken on the 10<sup>th</sup>, and on the 15<sup>th</sup> of December 2003, the Police Commission members met to evaluate the interviews. Based on the rating system put forth, the following is a summary of the evaluation process.

**EXPERIENCE for 20%:** Both candidates have 16 years experience, both have performed well and both have had various administrative duties. Timothy Sorrell performed as the Senior Officer for the past nine years, with various administrative duties as set forth by the Chief. The edge goes to Timothy in experience.

**EDUCATION for 15%:** Both candidates will be receiving their degrees next May at BCC in Criminal Justice. Mark appears to be a better student (4.0 vs. 3.8) with more computer background. Timothy has demonstrated a quest for learning with the extra training he has amassed over the past 16 years. Again, the edge goes to Timothy for the extra effort in training.

**INTERVIEW for 60%:** Both candidates performed admirably. Members of the Police Commission had them neck and neck, except in two areas.

First. In the area of changes to the department. Mark would not implement any major changes to the department, citing it as a well-run department now. His rationale was sound. However, Timothy had several good ideas he would like to implement: have the chief work an occasional Saturday or Sunday; more DARE hours (possibly having the school department pay for some of those extra hours); pictures and photo ID displayed at the police department and possibly another site (post office) to better acquaint the public with who is on the force and more visibility at town meetings and senior gatherings. Edge goes to Timothy on that question.

Second was in the supervisory experience. Timothy's position with the drug program enabled him to get additional training and exposure to the drug community. His Senior Officer status for the past nine years and performing various administrative and discipline duties gives Timothy the edge here.

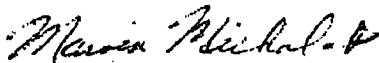
All other questions were regarded as a draw. Timothy had the better score for the interview by a total of two points.

WRITTEN QUESTION for 5%. Both candidates expressed a strong desire to serve the town of Lanesboro and to keep the police department as a top-notch unit. Both are excellent workers and both give their best efforts to improve the town. The Police Commission scored this as a draw.

The members of the Police Commission interviewed two good candidates for this position. There should be no losers here. Both have expressed a willingness to stay with the department and be loyal, contributing members of the force. The Police Commission recommends Timothy Sorrell for the position of Chief of Police for the town of Lanesboro.

If you have any further questions or discussions, please feel free to ask.

Respectfully,



Marvin Michalak Chairman

Charles Durfee

William V.C. Giftos

Lis Phelps (in absentia)

**DOUGLAS R. WEBB**

25 MINER ROAD  
LANESBOROUGH, MA. 01237

---

Home Phone (413)445-5155

DECEMBER 17, 2003  
TO FELLOW BOARD MEMBERS  
POLICE COMMISSION AND THE  
CITIZENS OF LANESBOROUGH:

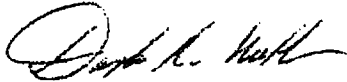
TODAY I AM MAKING MY DECISION AS TO WHO I BELIEVE SHOULD BE THE NEXT CHIEF OF POLICE IN THE TOWN OF LANESBOROUGH. I WOULD LIKE TO THANK BOTH CANDIDATES FOR TAKING THE TIME TO BE INTERVIEWED. ALSO I WOULD LIKE TO THANK MY FELLOW BOARD MEMBERS, THE POLICE COMMISSION, TOWN SECRETARY AND TOWN ADMINISTRATOR.

WE HAVE TWO EXCELLENT POLICE OFFICERS, BOTH WITH 16 YEARS OF EXPERIENCE AND BOTH DULY QUALIFIED FOR THIS POSITION. THIS HAS BEEN NO HASTY DECISION ON MY PART, I THANK THE CITIZENS AND OTHER POLICE DEPARTMENTS AND LAW RELATED INDIVIDUALS FOR THEIR SUPPORT FOR THE OFFICERS.

MY QUALIFICATION RATING WAS VERY CLOSE ONLY A DIFFERENCE OF 2.2 POINTS. MY SELECTION IS F. MARK BASHARA TO BE THE NEXT CHIEF OF POLICE IN LANESBOROUGH. HIS DEMEANOR FITS THIS POSITION.

IN CLOSING I WOULD LIKE TO ALSO THANK CHIEF MISIUK FOR HIS PROFESSIONALISM IN CREATING SUCH A FINE DEPARTMENT AND TWO EXCELLENT OFFICERS.

Sincerely,



DOUGLAS R. WEBB,  
CHAIRMAN  
LANESBOROUGH BOARD OF SELECTMEN

Gold

In scoring the interview questions, I tried to consider how well the applicant's answer applied to the question as well as how well it fit with the kind of chief I feel Lanesboro needs. That the scores ended up so close did not surprise me: both candidates are strong in their own ways.

Tim Sorrell obviously loves law enforcement. His dedication and enthusiasm are to be commended. But I fear in his exuberance and desire to become chief, a natural progression of his career, he has lost sight of an essential ingredient in running the department: a connection with people. While praising the department, he expresses many changes he would like to institute. While some of these might be fine, the general impression I got was that Tim would take an approach quite different from that taken by Stan who we all acknowledge has honed a well-functioning department with an excellent reputation while being fairly low-key. Generally, Tim's answers were more about law enforcement issues than dealings with people.

Mark, on the other hand, appears to be of the "if it ain't broke, don't fix it" school. His answers were direct and brief and tended to be more philosophical than Tim's. Some of that is due to the difference in experience between the two but I believe it also reflects a more people-oriented approach on Mark's part. Most important to me were his responses to 9,10,12, 14 and 15. Despite his lack of technical experience in some areas, Mark seems a better fit for the kind of chief I feel the town needs. Stan was an excellent peace keeper but he also was a peace maker. Procedure, rules and regulations are of course extremely important, especially in law enforcement. But we are a small town with a small department and the person running it needs to be able to empathize with people, to rule with a velvet glove. I feel Mark will be better at that than Tim and am recommending him for the position of chief.

However, they both need tutoring in spelling!

12/17/2003

From the desk of Peter H. Gallant Re Lanesborough police chief

One of the hard choices I have had to make in my nine years as a selectmen is to make a division between these two fine and very capable men for chief of police for the Town of Lanesborough.

Letters received for both officers were very impressive. everyone even at this point.

Resumes also very impressive with a slight edge going to officer sorrell.

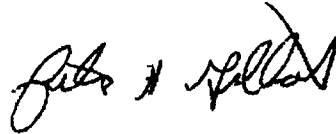
An amazing amount of phone calls for and against both officers again even.

The interviews went smoothly, Both officers handled themselves as you would expect. The defining

moment between the two was when officer sorrell either mis-spoke or knowingly withheld information that was available to the Select board. I was very disappointed by this it was not expected by me.

The interviews were the reason I selected officer Basahra. Let the record read that though not chosen I still have a great deal of confidence in officer Sorrell and look forward to working with him in the future.

Peter H. Gallant

A handwritten signature in dark ink, appearing to read "Peter H. Gallant", written in a cursive style.